

Opinion No. 47-5075

September 9, 1947

BY: C. C. McCULLOH, Attorney General

TO: Marshall S. Hester Superintendent New Mexico School for the Deaf Santa Fe, New Mexico

{*86} In Opinion No. 5066, dated August 14, 1947, I stated that in view {*87} of the constitutional and statutory provisions and the policy of this State to prohibit the teaching of sectarian religion in the public schools and state educational institutions, you should not permit religious instruction in the School for the Deaf by representatives of local churches.

Due to the fact that this broad statement seems to have been construed so as to prohibit religious training or services on the grounds or property of state educational institutions, after school hours and entirely separate and apart from the school curriculum, and several questions have been raised concerning the same, I desire to clarify the former opinion.

In your request, you state that for many years it has been the policy of the School to have all religious instruction given off the school grounds. Such a policy is and remains a matter for the Board to determine.

In the former opinion, I quoted Article 12, Section 9 of the Constitution which prohibits religious tests for teachers or students as a condition for admission to public schools or educational institutions, and provides at the end of said section as follows: "and no teacher or student of such school or institution shall ever be required to attend or participate in any religious service whatsoever."

Section 55-1102 of the 1941 Compilation prohibits a teacher in the public schools from using sectarian books or teaching sectarian doctrines; however, this section does authorize the use of school buildings for other purposes after school hours when authorized by the County Board. Such "other purposes" would include use for religious worship.

Section 55-2822 of the 1941 Compilation provides:

"All the said institutions shall forever remain strictly nonsectarian in character, and no creed or system of religion shall be taught in any of them."

This section would certainly prohibit the teaching of any creed or system of religion by the institution as a part of its course of instruction or curriculum, and prohibit religious training by anyone during school hours, but I do not believe it was intended by the Legislature by this section to prohibit the use of school grounds or property after regular

school hours by representatives of local churches, not associated with the institution, for religious instruction on a purely voluntary basis so far as the students are concerned.

The former opinion is thus modified to the extent that in my opinion neither the constitution nor statutes prohibit religious training given by someone not connected with a state educational institution after school hours. Use of the grounds and property of the institution, of course, are subject to control of the governing board. Such religious instruction must be wholly voluntary on the part of the students and entirely dissociated from the curriculum or course of instruction of the institution and its faculty. If use of tax supported institutional grounds or buildings is permitted to one denomination, the same privilege should be granted to all denominations seeking the privilege, without discrimination.